



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

CESPL-CO-R

MEMORANDUM FOR THE RECORD

SUBJECT: Regulatory Program Funds Contributed by Non-Federal Public Entities

1. Reference memorandum, CECW-OR, 17 July 2001, subject as above.
2. The purpose of this memorandum is to document the decision by the Los Angeles District (SPL) to accept and expend funds contributed by non-Federal public entities, specifically the City of San Diego, to expedite the evaluation of permits under consideration of our Regulatory Branch.

The funding would be accepted and expended in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541). Section 214 of WRDA 2000 reads as follows:

- (a) IN GENERAL. "In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army."
- (b) EFFECT ON PERMITTING. "In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally."

3. HQUSACE provided guidance on acceptance and use of such funds in referenced memorandum 17 July 2001. That guidance included instructions to circulate an initial public notice that would explain the newly authorized funding mechanism and provide information on the following specific areas:

- a. names of the participating non-Federal public entities,
- b. the Corps authority to accept and expend such funds,
- c. the reason for such contributions,

- d. how acceptance of the funds is expected to expedite the permit review process,
- e. what kinds of activities the funds would be expended on,
- f. the procedures to be placed in effect to ensure the funds will not impact impartial decision making.

4. SPL published such a Special Public Notice on 28 January 2002. It contained an announcement of SPL preliminary intent to accept such funds from the City of San Diego. The public notice contained the actual text of Section 214, described conventional funding, defined non-Federal public entities, and presented information on the following subjects:

- a. how SPL would expend the funds,
- b. the kind of activities for which funds would be expended,
- c. the procedures we will use to ensure that the funds will not impact impartial decision making,
- d. the benefits non-Federal public agencies would receive from their funds, and
- e. impacts we foresee to our regulatory program and to Department of the Army permit evaluations that are not subsidized by funds contributed by non-Federal public entities.

SPL would then review comments received in response to the Special Public Notice, and determine if SPL's acceptance and expenditure of the funds is in accordance with the provisions of WRDA 2000. According to the guidance:

"If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act, the District Commander may accept and expend such funds. . . Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. A new public notice will be issued regarding the District Commander's decision."

HQUSACE guidance also called for strict accounting of expended funds, upward reporting procedures, and careful assessment of how the use of the funds will have expedited the permit review process or given rise to issues regarding impartial decision making. To ensure that the

acceptance and expenditure of these funds will not impact impartial decision-making, HQUSACE guidance called for the establishment, at a minimum, of the following procedures:

- a. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the decision maker, unless the decision maker is the District Commander.
- b. All final permit decisions for cases where these funds are used will be made available on the participating Corps District's Regulatory web page.
- c. The Corps cannot eliminate any procedures or decisions that would normally be required for the type of project under consideration.
- d. The Corps must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the permit application. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees before the decision is made.

5. Comments from the general public. From the general public, we received one comment letter and one e-mail message from the same source. The content of this communications is virtually identical and is presented below, nearly verbatim. A bracketed number precedes each particular comment from the communication. Following the letter will be SPL's response to the comment preceded by the same-bracketed number.

The letter came from Ms. Dolores Welty of Leucadia, California. She wrote:

[1] "We strongly oppose allowing a jurisdiction to fund a position in the Regulatory Branch for a Project Manager to work primarily on projects by that or any other jurisdiction.

"We therefore strongly oppose the proposal by the City of San Diego to fund a position in the Regulatory Branch for a Project Manager to work primarily on projects proposed by the City of San Diego."

[2] "The idea that such a position would be free of bias is ludicrous to us.

"Even assuming the possibility that no bias would exist, that the City would generously acquiesce to a "No Project" decision or recommendation by the US Army employee, the

fact that the City funds the position leads to an assumption of bias on the part of the public who oppose the project or wish to see it modified.”

[3] “Surely the US Army Corps of Engineers is familiar with the statement, “FOLLOW THE MONEY.” Why in the world would you allow the integrity of your organization to be put in such a position?”

[4] “Furthermore, all public entities secure their money for legally designated uses. The federal government is the proper f(u)nding agency for federal entities, and it is not proper for those entities to rely upon local public funding to perform their office.”

“Being funded by the jurisdiction which requests a permit is a “conflict of interest” you must avoid.”

SPL response to [1]: The Corps of Engineers is offering expedited action to the City of San Diego (City); this process will also facilitate the remainder of our pending applications. We have made preliminary agreements with the City, which maintains, on an ongoing basis, multiple active permit applications. The agreements, when complete, would let the City set priorities and receive some certainty of progress. The funds they supply would mostly go toward paying the hourly rates of the Regulatory employee working on expediting the City’s selected pending cases. This would incrementally reduce the pending caseload of the remainder of the regulatory employees. The normal Regulatory funds, which would have paid the salary of the staff member to be paid by the City, would instead be used to hire additional staff to work on the balance of the caseload.

SPL response [2]: Project managers in our Regulatory Program, regardless of the source of their funding, have a set pattern of information requirements, publicizing, policy interpretation, and documentation. Peer and supervisory review are constant elements at each step of the permitting process and are designed to prevent various forms of insufficiency. The system works now, and the enhanced review safeguards built in to this WRDA program will act to guarantee adherence to long-established policies and procedures. Especially effective should be the requirement for additional review by a person at least one level above the decision maker on all final permit decisions for cases where these funds are used.

SPL response [3]: It is our belief that our employees maintain a high degree of integrity. This belief is not diminished by a temporary funding source; Corps of Engineers management, from Headquarters on down, is determined that it not be.

SPL response [4]: Comment noted. The funding of such a position has been authorized in legislation passed by the US Congress, signed by the President, and thus a fully enacted public

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law. As stated earlier in this Memorandum of Decision and in the Special Public Notice of 28 January 2002, the funding would be accepted and expended in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541). Section 214 of WRDA 2000 reads as follows:

(a) IN GENERAL: "In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army."

6. After analyzing the comments received from the public, it is my decision that adoption of the procedures described elsewhere in this memorandum and in the public notice and the subsequent acceptance and expenditure of funds from the City of San Diego will not impact impartial decision making with respect to permits, either substantively or procedurally. The funding program will better serve the public interest through more cost-effective processing of permit applications, enhanced evaluation capability, and a streamlined permit processing system. Our capacity to evaluate all permit actions will be incrementally increased with the presence of additional regulatory personnel.

7. Acceptance and expenditure of these funds are in accordance with Section 214 of WRDA 2000.

2 Encls

1. CECW-OR Memo,
17 July 2001
2. SPL SpecialPublic Notice,
28 January 2002

RICHARD G. THOMPSON

COL, EN THOMPSON
Commanding CESPL-DE

GUENTHER
CESPL-DD-C

TEMMELE
CESPL-OC

BEAMS
CESPL-CO

SUDOL
CESPL-CO-R

DURHAM
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LAWRENCE
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